Supreme Court, U.S.
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No. 94-2071

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

TEXACO, INC. and TEXACO EXPLORATION AND PRODUCTION, INC.,

Petitioners,

v.

PAUL WILLIAMS and HARRISON ELLENDER,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT, HARRISON ELLENDER

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fifth Circuit engaged in "judicial legislation," prohibited by this Court in areas where Congress has spoken, when it denied a vessel owner the concursus proceeding mandated in an action filed under the Limitation of Vessel Owner's Liability Act, 46 U.S.C. §181, *et seq.*, thereby rendering a decision in direct conflict with the statute, Supplemental Admiralty Rule F, Supreme Court precedents, and its own appellate precedents.
2. Whether the Fifth Circuit's decision correctly resolved the "recurring and inherent conflict" between the exclusive jurisdiction vested in an admiralty court by the Limitation of Vessel Owner's Liability Act, 46 U.S.C. §181, *et seq.*, and the common law remedies embodied in the Saving to Suitors Clause of 28 U.S.C. §1333 when it abdicated the exclusive jurisdiction of an admiralty court to state courts.

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TO THE HONORABLE SUPREME COURT:

The Respondent, HARRISON ELLENDER, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petitioners, Texaco, Inc. and Texaco Exploration and Production, Inc.

STATEMENT OF THE CASE

Respondent, Harrison Ellender, was seriously burned in August of 1993 as a result of a fire and explosion on a barge owned by Texaco, Inc. and operated by Texaco Exploration and Production, Inc. Respondent filed a Jones Act and General Maritime lawsuit in State Court in the 32nd Judicial District Court in and for the Parish of Terrebonne, State of Louisiana, pursuant to the "saving to suitors" clause in 28 U.S.C. §1333.

Texaco Inc. and Texaco Exploration and production, Inc. filed a limitation of liability proceeding in the U.S. District Court for the Eastern District of Louisiana subsequent to Respondent's State Court suit being filed. It also sought exoneration from liability in that proceeding. Respondent and another claimant filed, in the limitation action, claims which exceeded the value of the barge in question.

Respondent, along with the other claimant, then filed a motion to lift the stay that had been issued with the limitation proceeding. Claimants submitted stipulations to protect the vessel owner and operator's right to seek limitation and/or exoneration of liability.

The district court denied the claimants' request to lift the stay and refused to stay the matter pending appeal. The Fifth Circuit Court of Appeal stayed the limitation action pending the appeal and rendered an opinion which reversed the District Court. Claimants' argued that the stipulations provided to the vessel owner and operator in effect converted a multiple claim case into a single claim situation. The Court of Appeal allowed the stay to be lifted if the claimants' stipulations covered *all* potential claimants and adequately protected Texaco's right to seek exoneration or limitation of liability. By taking this

action, the Fifth Circuit resolved the conflict between the rights of the claimants to pursue their remedies under the Saving to Suitors clause in 28 U.S.C. §1333 and at the same time protected and recognized the owner and vessel operator's right to seek exoneration and limitation of liability pursuant to 46 U.S.C. §181, *et seq.*

In its statement of the case, petitioner asserts that "the need for uniformity in the administration and application of maritime law is again before this Court." (p. 3 of Petition for Writ of Certiorari) Respondent has not sought any state remedy other than those afforded it in the Saving to Suitors clause. Unlike *Yamaha Motor Corp. U.S.A. v. Calhoun*, 115 S.Ct. 1998 (1995), Respondent is not seeking to supplement his damage claim by relying on any state law damage remedy. Respondent simply has filed his Jones Act and General Maritime Law claim in State Court as allowed by the Saving to Suitors clause in 28 U.S.C. §1333. There is no issue regarding lack of uniformity of maritime law in this case.

Petitioners also claimed that the Fifth Circuit refused to follow this Court's precedents and its own precedents. This is an incorrect assertion. The Fifth Circuit in fact followed its own precedents set out in *Magnolia Marine Transport v. Laplace Towing Corp*, 964 F.2d 1571 (5th Cir. 1992) and *Odeco Oil and Gas Co. Drilling Division v. Bonnette*, 4 F.3d 401 (5th Cir. 1993). The decision of the Fifth Circuit does not "eviscerate" the Limitation Act and Admiralty Rule F as claimed by Petitioner. To the contrary, the Fifth Circuit made it abundantly clear that it was protecting the ship owner and operator's rights to limitation by preserving the federal court jurisdiction over the limitation action and preventing claimants from raising any limitation issue in the state court proceeding as required by the stipulations.

Finally, the decision does not abdicate the exclusive grant of admiralty jurisdiction. The opinion specifically states "if the stipulations cover *all* potential claimants and adequately protect Texaco's right to receive exoneration or to limit liability, then the stay should be lifted, allowing appellants to pursue their saving to suitors remedies." *Texaco, Inc. v. Williams*, 47 F.3d 765, 770 (5th Cir. 1995) This is not an abdication of admiralty jurisdiction but is actually a protection of it by insuring Texaco's rights to seek limitation and/or exoneration.

SUMMARY OF THE ARGUMENT

The Fifth Circuit in its opinion below did not participate in "judicial legislation." Its decision follows its prior case law as well as the law in the Second, Third, and Eighth Circuits and prior decisions of this Court. It resolved the conflict between the Limitation of Liability Act 46 U.S.C. §181, *et seq.*, and the saving to suitors clause of 28 U.S.C. §1333 in favor of giving effect to both statutes rather than give one party more rights than the other. Claimants have their saving to suitors rights and the vessel owner has its limitation rights.

There was no abdication of admiralty jurisdiction by the Court below. It in fact made it perfectly clear that it was protecting its admiralty jurisdiction by requiring stipulations that would prevent the state court from deciding any limitation issues.

REASONS FOR DENYING THE WRIT

This Court long ago recognized the conflict between the Limitation of Liability Act 46 U.S.C. §181 *et seq.* and the "Saving to Suitors" clause in 28 U.S.C. §1333. In *Langnes v. Green*, 282 U.S. 531; 51 S.Ct. 243 (1931),

a single claimant had filed suit in State Court. The vessel owner filed for limitation pursuant to 46 U.S.C. §181, *et seq.*, and an injunction issued to stay the state court proceeding. The Court recognized that:

> [T]he situation, then, is that one statute gave respondent the right to a common-law remedy, which he properly sought in the state court; and another statute gave petitioner the right to seek a limitation of liability in the federal District Court. 282 U.S. 531, 539-540; 51 S.Ct. 243, 246

It resolved the conlfict by allowing the state court suit to proceed but retained jurisdiction of the limitation action to protect the ship owner's right to limitation. That procedure was likewise followed in *Lake Tankers Corp v. Henn*, 354 U.S. 945; 77 S.Ct. 1421 (1957), where the value of the claims were less than the value of the funds.

The Eighth Circuit followed these guide lines in *Universal Towing Co. v. Barrale*, 595 F.2d 414 (8th Cir. 1979). There, a death claim was filed by the widow of a seaman, and an indemnity claim and a claim for attorney's fees and costs was filed by a third party against the vessel owner. The widow filed a stipulation allowing the claimant for attorney's fees and costs to be paid in priority. The Eighth Circuit determined that this stipulation converted a multiple claim case into a single claimant case which eliminated the need for a concourse. It ordered the District Court to dissolve the injunction unless the vessel owner could demonstrate his right to limit liability would be prejudiced.

The Second Circuit followed this procedure in *Complaint of Dammers and Vanderheide*, 836 F.2d 750 (2nd Cir. 1988). Before the court was a claim for personal injury by a seaman and a claim for loss of con-

sortium by the claimant's wife along with claims of third parties for attorney's fees and costs. Claimants filed stipulations which converted the multiple claims into a single claim case. The stipulations required the claimant to concede the ship owner's right to have the limitation of liability claim tried exclusively in federal court, and protect the ship owner from completing claims in excess of the limitation fund. The Court stated that:

> "as long as the admiralty court can effectively insure that a ship owner will not face liability in excess of the limitation fund, it must take all steps necessary to assure that claimants are allowed to pursue their common law remedies in accordance with the 'saving to suitors' clause." 836 F.2d 750, 759 (2nd Cir. 1988).

The Third Circuit adopted this procedure in *Gorman v. Cerasia*, 2 F.3d 519 (3rd Cir. 1993). There the Court stated that as long as the priority stipulations filed in the District Court insure that the ship owner will not be exposed to competing claims in excess of the limitation fund, the District Court may authorize the parties to proceed with the State Court action.

The Fifth Circuit likewise adopted and approved this procedure in *Magnolia Marine Transport v. Laplace Towing Corp.*, 964 F.2d 1571 (5th Cir. 1992) and *Odeco Oil and Gas Co. Drilling Div. v. Bonnette*, 4 F.3rd 401 (5th Cir. 1993); writ denied 114 S.Ct. 1370 (1994).

The Fifth Circuit in the case before this Court simply followed these precedents. The decision below is not in direct conflict with the prior decision of the Fifth Circuit in *Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546 (5th Cir. 1960) as alleged by Petitioner. As noted by the Court in *Odeco, Pershing* involved stipulations by *less* than *all* of the claimants. See 4 F.3d 401, 405

FN7 (5th Cir. 1993) In the case before this Court, the only two claimants have joined in and filed the stipulations which protect the ship owner's right to seek limited liability and they have agreed to proceed in the same state court proceeding. The opinion of the court below was not "judicial legislation." It followed the law as set forth in prior Fifth Circuit decisions and followed the procedure adopted by the Supreme Court, the Second, Third, and Eighth Circuits.

The Fifth Circuit did not abdicate its admiralty jurisdiction in favor of state common-law remedies. This argument made by petitioner is unsupported in the opinion as well as the law. The Court retained jurisdiction for the limitation case and made it abundantly clear that no issue in reference to the limitation would be tried or become res judicata by the State Court proceedings.

What the Fifth Circuit did was to protect the right of the ship owner to limitation of liability and the right of the claimants to proceed with their Saving to Suitors action. It reconciled the conflict between these two statutes and protected the rights of all the parties.

Texaco will not be required to defend multiple claims before a jury in multiple courts with a risk of lack of uniformity in the law to be applied to the case. The opinion below required that both claimants file their state court proceedings in the same state court. It also required that they be consolidated and tried in one state trial. The Court allowed the injunction to be lifted only "[i]f the stipulations cover all potential claimants and adequately protect Texaco's right to receive exoneration or to limit liability." 47 F.3d 765, 770 (5th Cir. 1993) That was not abdication but direct protection of the admiralty jurisdiction.

CONCLUSION

Contrary to the allegations made by petitioner, the opinion of the Fifth Circuit below followed prior case law of the Fifth and other circuits as well as this Court. There was no "judicial legislation." There was no abdication of admiralty jurisdiction. The Fifth Circuit made it abundantly clear that it was fully protecting its admiralty jurisdiction by requiring stipulations that would prevent inclusion of limitation issues in the state court proceedings. The procedure used thus fully protected both parties rights under both the Limitation of Liability Act 46 U.S.C. §181, *et seq.*, and the "Saving to Suitors" clause of 28 U.S.C. §1333. For these reasons, the petition for certiorari should be denied.

Respectfully submitted,

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